IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant:		)	
	FAHEY ET AL.	)	
		)	Examiner A. Flanders
Appl. No.	09/972,381	)	
		)	Art Unit 2644
Confirm. No.	5141	)	
		)	Atty. Docket No. CS90041
Filed:	5 October 2001	)	
Title:	"Mobile Wireless Communication Handset with Sound Mixer And Methods Therefor"		

PRE-APPEAL BRIEF REVIEW REQUEST

Assistant Commissioner for Patents
Alexandria, Virginia 22313

Sir:

Review Request, Rejection Summary & Claims Pending

The instant Request has been filed contemporaneously with a Notice of Appeal filed under 37 CFR 41.31 in response to a final Office Action mailed on 2 June 2006. No amendments have been filed under 37 CFR 1.116. Kindly review the instant application in view of the discussion below.

Claims 1-37 stand rejected under 35 USC 102(e) as being unpatentable over U.S. Publication No. 2001/017415 (Hruska).

Claims 1-37 are pending.

Allowability of Claims Over Hruska

Allowability of Claim 1

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control setting. Hruska, para. [0020-22 & 0024]. Hruska does not disclose an audio mix data reference file having reference data, wherein the reference file is stored separately from the soundtrack data file. In Hruska, the sound track data files (musical patterns) are stored as part of the MIDI file. The disclosure in Hruska, at para. 0038, of loading MIDI and control files into a computer program for auditioning and simulating the operation of a mobile device does not suggest "… storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file" as recited in Claim 1. Claim 1 is thus patentably distinguished over Hruska.

Allowability of Claim 10

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control setting. Hruska, para. [0020-22 & 0024]. Hruska does not disclose playing one or more soundtracks referenced in a reference file, wherein the reference file is stored separately from the soundtrack data file. In Hruska, the sound track data files (musical patterns) are stored as part of the MIDI file. The disclosure in Hruska, at para. 0038, of loading MIDI and control files into a computer

program for auditioning and simulating the operation of a mobile device does not suggest an "...audio mix data reference file stored separately from the soundtrack data set file on the handheld mobile wireless communication device" as in Claim 10. Claim 10 is thus patentable over Hruska.

Allowability of Claim 14

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control setting. Hruska, para. [0020-22 & 0024]. Hruska does not disclose an audio mix data reference file devoid of soundtrack data from the soundtrack data set file. Thus Hruska cannot possibly integrate an audio mix data reference file and a soundtrack data set file into a single audio format file wherein the audio mix data reference file is devoid of soundtrack data from the soundtrack data set file. In Hruska, there is no need for audio mix data reference files since the sound track data files (musical patterns) are already stored as part of the MIDI file. Claim 14 is thus patentably distinguished over Hruska.

Allowability of Claim 18

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for re-arranging and mixing musical songs, and particularly 3 different levels: a first level for playing and mixing songs; a second level for instrument selection;

and a third level for editing music. Hruska however fails to disclose dynamic mixing of audio tracks that includes "… selecting a second soundtrack while playing the first soundtrack" and "… playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack." Claim 18 is thus patentably distinguished over Hruska.

Allowability of Claim 30

       The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for re-arranging and mixing musical songs, and particularly 3 different levels: a first level for playing and mixing songs; a second level for instrument selection; and a third level for editing music. Hruska however fails to disclose dynamic mixing of a soundtrack and an audio characteristic for the sound track including "… playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic." Claim 30 is thus patentably distinguished over Hruska.

Allowability of Claim 34

       The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0024], Hruska discusses a text control file that specifies the initial state (ON or OFF) music file parts. In FIG. 2 of Hruska, discussed at para. [0025], the numerical values are indicative of

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notes and tempo. Hruska does not disclose soundtracks having differing time intervals. Claim 34 is thus patentably distinguished over Hruska.

Allowability of Claim 37

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for re-arranging and mixing musical songs, and particularly 3 different levels: a first level for playing and mixing songs; a second level for instrument selection; and a third level for editing music. Hruska however fails to disclose dynamic mixing of audio tracks wherein a second soundtrack or soundtrack characteristic is played upon selection while a first sound track is playing. Claim 37 is thus patentably distinguished over Hruska.

Prayer For Relief

In view of the discussion above, the Claims of the present application are in condition for allowance. Kindly withdraw any rejections and objections and allow this application to issue as a United States Patent without further delay.

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Respectfully submitted,

/ R K Bowler /

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